

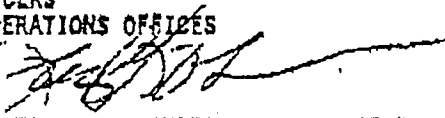


The Secretary of Energy

Washington, DC 20585

August 18, 1993

MEMORANDUM FOR: SECRETARIAL OFFICERS
MANAGERS, DOE OPERATIONS OFFICES

FROM: HAZEL R. O'LEARY 

SUBJECT: GUIDANCE ON REPORTING PROCEDURES FOR ENFORCEMENT ACTIONS
RELATED TO VIOLATIONS OF ENVIRONMENTAL REQUIREMENTS

In recent months, there have been a number of environmental enforcement actions initiated against the Department and its contractors, many involving a potential assessment of a fine or penalty. These have raised concerns about accountability, as well as internal reporting procedures and proper coordination of expeditious corrective actions, for alleged violations of environmental requirements. Since the Department of Energy's policy is to comply fully with all applicable Federal, State and local environmental requirements, receipt of any notice of violation by the Department or its contractors is a matter of serious concern and requires continued focused management attention.

It is the Department's policy that the responsible party or parties be held accountable for violations of environmental requirements. To assist in promoting accountability for environmental violations and to clarify related reporting procedures, the Attachment to this Memorandum sets forth guidance on internal response and coordination for notices of environmental enforcement actions. I am directing the Assistant Secretary for Environment, Safety and Health to revise existing DOE Orders, as appropriate, to incorporate the principles outlined in this guidance. In addition, I am requesting the Assistant Secretary for Environment, Safety and Health to prepare annual reports analyzing the enforcement actions against the Department and its contractors during the preceding year and recommending means to improve the Department's environmental performance.

Finally, let me emphasize and affirm my commitment to developing a strong partnership among the Department, its contractors, the Environmental Protection Agency, State regulatory authorities, citizens groups, and the public in general. As we work to make the Department a model of responsible environmental stewardship, I intend to propose additional actions to build on the efforts currently ongoing to attain and maintain compliance in cooperation with the regulatory authorities and other affected stakeholders. Further guidance will be forwarded to your offices within several weeks to address management actions that should be taken to address responsibility for environmental violations and the payment of fines and penalties.

Attachment

DOCUMENT CLASSIFICATION
REVIEW WAIVER PER
CLASSIFICATION OFFICE

1. Enforcement Against the Department.

Within 24 hours of receipt of an enforcement notice against the Department, the Operations Office should prepare and forward to the Associate Deputy Secretary for Field Management, the General Counsel, the Assistant Secretary for Environment, Safety and Health, and the cognizant Secretarial Officer, a copy of the enforcement notice and an information paper that describes:

- (A) the nature of the alleged violation and of the environmental threat posed thereby;
- (B) whether the alleged violation has been corrected, or is continuing;
- (C) the basis for the regulatory authority's discovery of the alleged violation (e.g., Department or contractor self-reporting or external regulatory inspection);
- (D) whether fines or penalties are being assessed and, if so, the amount; and
- (E) whether duplicative notices were issued to the Department and to a contractor for the same alleged violation.

When an Occurrence Notification Report is required under DOE Order 5000.3B for the enforcement notice, a separate information paper need not be prepared. In such cases, to avoid duplication of effort, a copy of the required Occurrence Notification Report together with any additional information needed to respond to the above items should be submitted to the individuals noted above.

Within 10 working days after receipt of an enforcement notice, the Operations Office should supplement the above report with an analysis of:

- (A) the degree of responsibility of the Department and its contractor for the alleged violation, regardless of who received the notice;
- (B) whether the Operations Office or any affected contractor disagrees with the legal or factual grounds for the alleged violation;
- (C) whether the issuing regulatory authority's proposed resolution should be accepted, or whether an attempt should be made to contest the notice or to negotiate a different settlement; and
- (D) the actions taken, or proposed, to prevent similar alleged violations from occurring in the future.

New information and developments, including ultimate resolution of the enforcement action and any payment of fines and penalties, should be reported promptly to supplement the above reports.

11. Enforcement Against Contractors.

Alleged violations of environmental requirements by the Department's management and operating contractors, environmental restoration management contractors and their subcontractors are of no less concern to Departmental management than alleged violations by the Department. Contracting Officers should direct that within 24 hours of receipt of a Notice of Violation or other enforcement notice by a contractor or subcontractor, the Contracting Officer should be provided with a copy of the enforcement notice together with a detailed description, signed by a Senior Corporate Officer of the contractor or subcontractor, of:

- (A) the nature of the alleged violation and of the environmental threat posed thereby;
- (B) whether the alleged violation has been corrected, or is continuing;
- (C) the basis for the regulatory authority's discovery of the alleged violation (e.g., Department or contractor self-reporting or external regulatory inspection); and
- (D) whether fines or penalties are being assessed and, if so, the amount.

This information should be promptly forwarded to the Associate Deputy Secretary for Field Management, the General Counsel, the Assistant Secretary for Environment, Safety and Health, and the cognizant Secretarial Officer.

When an Occurrence Notification Report is required under DOE Order 5000.38 for the enforcement notice, a separate information paper need not be prepared. In such cases, to avoid duplication of effort, a copy of the required Occurrence Notification Report together with any additional information needed to respond to the above items should be submitted to the individuals noted above.

Within 10 working days after receipt of an enforcement notice by the contractor or subcontractor, a Senior Corporate Officer of the contractor or subcontractor should provide the Operations Office with:

- (A) a preliminary assessment of whether the alleged violation resulted from a failure of the Department to provide the contractor with requested guidance, funding, or authorization to correct the conditions leading to the alleged violation;
- (B) a preliminary assessment of whether the affected contractor disagrees with the legal or factual grounds for the alleged violation;
- (C) a preliminary recommendation as to whether the issuing authority's proposed resolution should be accepted, or whether an attempt

4
should be made to contest the notice or to negotiate a different settlement; and

- (D) a description of actions taken, or proposed, to prevent similar alleged violations from occurring in the future.

The Contracting Officer should forward this information promptly to the Headquarters Officials noted above to supplement the earlier report. The contractor also should be directed to provide the Contracting Officer with new information and developments on the resolution of the enforcement action. Any such new information and developments, including ultimate resolution and any payment of fines and penalties, should be forwarded to the same Headquarters officials.